IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10759 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ARVINDBHAI BAWABHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

MR MM TIRMIZI for Petitioner

MR HH PATEL AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 27/02/2001

ORAL JUDGEMENT

#. Challenge has been made by the petitioner to the order dated 21.9.2000 of the Police Commissioner, Surat City, under which he was detained as a bootlegger.

#. Manifold contentions have been raised by the

learned counsel for the petitioner challenging this order but as this petition deserves acceptance only on one ground it is not necessary to refer, discuss and decide all those contentions.

#. One of the contentions has been raised that despite of demand made by the petitioner in his representation filed to the Police Commissioner, Surat City against the detention order for the supply of statement of witnesses recorded in South Prohi C.R. No.1457/2000 the same are not supplied to the petitioner. Another grievance made that his representation has not been decided by the detaining authority.

#. Reply to the special civil application has not been filed by any of the respondents and as such the factual averments made by the petitioner in the special civil application stand uncontroverted.

#. The learned counsel for the respondent orally submitted that representation of the petitioner was decided on 10.11.2000. It is further contended that statements of the person named in the representation was not recorded and as such there was no need on the part of the detaining authority to give copy of the same to the petitioner. So far as copies of other documents of FIR of the CR No.1497 of 2000 is concerned the leaned counsel for the respondent submits that it is typographical error. It is CR No.1457/2000. These are the questions of facts and orally same cannot be accepted. The petitioner has filed representation and detaining authority should have given the reply to the same that has not been done as there is no material produced on the record. Even if it is accepted that the representation has been decided, I fail to see this approach of the detaining authority not to care to file reply to the Special Civil Application when the serious question of facts raised. Merely on oral statements of the learned counsel for the respondent that it is a typographical error the same cannot be accepted. If it would have been really a typographical error it should have been come from the mouth of the detaining authority, that has not been done. So far as the documents and statements of Suresh Dayal is concerned it is suffice to say that there also the detaining authority has not filed affidavit and as such it is to be taken to be accepted. So, the petitioner has not been given the copies of the vital and relevant documents. It is a clear case where the petitioner has been denied of his right of making effective representation against the detention order as

guaranteed under Article 22(5) of the Constitution of India.

#. In the result, this petition succeeds and the same is allowed. The order of detention of the petitioner dated 21.9.2000 is quashed and set aside. The petitioner Arvindbhai Bawabhai Patel, the detenu, at present in Rajkot District Jail, Rajkot be set at liberty forthwith, if he is not required in any other case. Rule is made absolute. No order as to costs.

****

Pvv